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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1105th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 October 1991, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1105/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Poland (CCPR/C/58/Add.10 and Add.13) (continued)

1. The CHAIRMAN invited the members of the Committee to continue their consideration of the third periodic report of Poland (CCPR/C/58/Add.10 and Add.13).

2. Mrs. HIGGINS said she would like to clear up any misunderstanding that might have arisen concerning questions raised at the previous meeting on the prohibitions listed in paragraph 123 of the report (CCPR/C/58/Add.10). The Committee had clearly understood that the provisions banning the various activities listed in that paragraph were no longer in force and had already become part of Poland's history. However, the question remained whether those activities, considered at the time to be offences - which would explain the existence of censorship on a preventive basis - were still violations under the provisions of the Penal Code. If so, that would mean that significant limitations on freedom of expression persisted in Poland.

3. Mrs. SKORZEWSKA-LOSIAK (Poland) replied that the activities to which Mrs. Higgins had referred were in fact criminal offences, for the Code of Penal Procedure had unfortunately not yet been amended regarding that question. She would like to point out, however, that there had not been any convictions on those grounds. Nevertheless, it was quite obvious that activities such as incitement to murder should be punished. A broad general revision of the Penal Code was currently taking place, and the changes made would undoubtedly resolve that problem satisfactorily.

4. The CHAIRMAN invited the Polish delegation to reply to the questions raised in sections XII and XIII of the list of issues, which read:

"XII. Right to participate in the conduct of public affairs (art. 25)

What is the current status of the law on political parties?

XIII. Rights of persons belonging to minorities (art. 27)

(a) Please provide information concerning ethnic, religious and linguistic minorities in Poland and regarding measures taken to guarantee their rights under article 27 of the Covenant.

(b) Please provide information on the composition and powers of the National and Ethnic Minorities Commission.

(c) What is the situation of gypsies in Poland?

5. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to the question contained in section XII, said that the activities of political parties were governed by a law enacted in 1990. A party acquired legal personality once it was entered in a kind of register deposited with the provincial court in Warsaw.

In 1990, 40 parties had been registered, and only one had not been authorized, because it had not furnished the required documents. During the first six months of 1991, the competent authorities had received 51 applications for registration, and in only one case had the necessary documents not been provided. The Constitutional Court was the only body empowered to refuse to register a party, and then in only two cases: (1) if the future party's activities aimed to change the current constitutional order by force, and (2) when the leaders of the future party sought to use violence in public life.

6. In reply to the questions raised in sections XIII (a), (b) and (c), she said there were numerous ethnic minorities in Poland, representing a total of 800,000 persons. There were 300,000 Ukrainians. 250,000 Byelorussians, 200,000 Germans, 20,000 Lithuanians and 15,000 Jews.

7. Generally speaking, the policy of the Polish authorities was based on internationally recognized standards for the protection of the rights of minorities and it took account, in particular, of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

8. At one time the minorities had wished to be covered by a separate law. Such a measure would have been difficult to implement, for there were provisions relating to minorities in several different laws. The new law on education, for example, made it possible for pupils who were members of ethnic minorities to preserve their identity and learn their mother tongue, history and culture. The prevailing trend currently seemed to be towards accompanying legislative provisions by constitutional guarantees to protect the interests of minorities. The various draft constitutions deposited contained a series of specific measures aimed at defending the rights of minorities. Those measures dealt in particular with the prohibition of discrimination, the possibility of freely choosing to belong to a minority and aid given to ethnic minorities for preserving their cultural, historical and linguistic heritage.

9. She drew the Committee's attention to two important measures, namely the repeal of a 1952 provision changing the spelling of the names of people belonging to ethnic minorities, and the fact that those minorities were now entitled to days off to celebrate their religious holidays, even if those holidays did not coincide with the official holidays in Poland.

10. The authorities were fully aware that the protection of minorities required not only an adequate legal framework, but also affirmative action by the State. That was why the National and Ethnic Minorities Commission had been set up. It was chaired by the Minister of Culture and the Arts and was made up of several other ministers, the Chairman of the Radio and Television Committee and four leaders from provinces containing minorities. The Commission cooperated closely with the minorities themselves; it was in charge of programming State policy and initiatives and coordinating the administration's actions with regard to minorities.

11. One essential aspect of that policy was to guarantee the ethnic minorities the possibility of studying their various mother tongues. At present it was possible to learn Byelorussian, Lithuanian, Slovak, German and Ukrainian. Minorities were also entitled to found different types of associations, and the State budget provided for funds for maintaining their cultural

associations. Minorities participated in local government through territorial self-management, and members of minorities were members of administrative bodies at the commune level.

12. Regarding the recent legislative elections, she explained that, given the dissemination of minorities throughout the national territory, the Elections Act was much more flexible where they were concerned, and their candidates had to meet less strict requirements than the others. She noted that a special National and Ethnic Minorities Commission had been set up in the Diet. The Commission was made up of 20 or so delegates who met regularly with the minorities' representatives.

13. The gypsies numbered 10,000 to 15,000 in Poland, but the figure was decreasing because many gypsies were emigrating to Germany. They were grouped into four associations which sought to assert their national minority status. The year 1990 had brought into existence the first gypsy publication, which was sponsored and subsidized by the Ministry of Culture and the Arts. With regard to education, many gypsy children did not attend school, and efforts were being made to set up special classes for them. There was as yet no teaching of the gypsy language in Polish schools, but the need to remedy that situation was being considered.

14. Referring to events that had recently taken place in Poland, during which several gypsy homes and vehicles had been destroyed, she said that the authorities strongly condemned those acts and that criminal proceedings had been instituted against 16 persons suspected of being responsible for them. There was no doubt that the culprits would be convicted in accordance with the law. Moreover, a special commission had been set up to inquire into the matter; the inquiry had shown that the incidents had been the result of an exacerbated feeling of frustration among the local population, linked to the sharp decline in the standard of living of a large number of inhabitants of the region due to the economic restructuring of the country. She was not seeking to justify the events that had occurred, but simply to explain that they in no way betokened an attitude of intolerance or discrimination against gypsies on the part of the Polish population.

15. In conclusion, she stated that the gypsy population in Poland was protected in the same way as all other ethnic minorities, and she hoped that its rights would be respected not only by the authorities but also by the citizens as a whole.

16. Mr. HERNDL expressed appreciation for the clarifications provided by the Polish delegation on the question of minorities. The information received was definitely more substantial than that contained in the part of the report (CCPR/C/58/Add.10) dealing with the implementation of the provisions of article 27 of the Covenant.

17. He noted that the representative had said that ethnic minorities represented 800,000 persons in Poland; that indicated a sharp increase in the size of ethnic minorities which had nearly doubled in relation to the figure indicated in Poland's second periodic report (CCPR/C/32/Add.9 and Add.13).

18. Thus ethnic minorities represented a very large community in Poland, and he also noted that it was the first time that a periodic report by Poland to the Human Rights Committee referred to a German minority. Paragraph 177 of the report (CCPR/C/58/Add.10) stated that the problems of the German minority had been raised during bilateral talks between Poland and the Federal Republic of Germany. Those discussions had culminated in an agreement between the two States, which contained provisions relating to that minority.

19. He was particularly pleased to note that the Polish authorities were aware that adequate protection of minorities required both a legal framework and affirmative action. The latter aspect also implied that the State would to some extent practise what might be termed "positive discrimination" in favour of minorities, to enable them to speak their language and preserve their identify.

20. Regarding education, there was a need to distinguish between the opportunity to learn one's mother tongue and the history and culture of one's minority in school and the possibility of being taught entirely in the minority language. The report submitted by Poland (CCPR/C/58/Add.10) was not clear on that point. It seemed that minorities in Poland were able to learn their language, but that they could not receive a general education in their mother tongue. He would like some clarifications in that regard. There were also a few confusing points in connection with the figures submitted by the Polish delegation. If minorities made up 800,000 persons in Poland, it was disturbing to note that only 6,347 pupils belonging to monorities were taking courses in their mother tongue, as stated in paragraph 176 of the report (CCPR/C/58/Add.10). Certain indications implied that Lithuanians, Byelorussians and Germans were still refused education and textbooks in their mother tongue.

21. At a time when it was remodelling its Constitution and legal system, Poland had a unique opportunity to play a leading role in the area of protection of minorities. The Polish authorities should make a particular effort to comply with international standards in that area, and minority rights should be given more consideration than had been the case so far. In that connection, he was pleased to note that an advisory body had been established to discuss questions of concern with the ethnic minorities. That was a first step which the Polish authorities should follow up in order for it to serve as an example for other countries.

22. Mr. SADI said that he found the proliferation of political parties in Poland to be natural after such a long period with no democracy. That having been said, he would like to know whether the Polish authorities took the provisions of article 20 of the Covenant into account in the process of legalizing political parties. Paragraph 2 of that article provided that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence was prohibited by law. He wondered what the authorities' attitude would be if some of the 50 or so parties requesting legal recognition advocated goals similar to those prohibited under article 20 of the Covenant. Was the Polish Government planning to adopt a law prohibiting parties whose statutes or activities violated the provisions of article 20? He would like further information on that question.

23. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the country had a total of 197 schools where minority languages were taught. The difficulties in that area were due to the dispersion of the members of minority groups. For example, the Ukrainian minority was distributed over 49 regions of the country, and the Jewish population was also highly scattered. On the other hand, the teaching of the mother tongue was easier for the Lithuanian minority, which was mainly to be found in the north-eastern part of the country. It was true that the number of pupils (6,300) learning minority languages was relatively low, but that was probably due not to a lack of incentives, but rather to a certain lack of interest in the teaching of minority languages. However, the situation could only improve, in view of the calm and thorough dialogue that had been initiated with the representatives of the ethnic minorities in order to settle problems and avoid conflicts.

24. Regarding party political activities, she explained that there were no restrictions at the registration stage, but that questions might be raised later on if the Constitutional Court found that a certain party was conducting unconstitutional activities. When the Court issued a decision to that effect, it could recommend a change in the party's statutes or programme. A party's activities could only be prohibited if they were aimed at forcibly overthrowing the constitutional order of the Republic. She pointed out that there were 91 political parties in Poland, not 50.

25. The CHAIRMAN said that the Committee had come to the end of the list of issues to be taken up in connection with the consideration of the third periodic report of Poland. He invited the members to make concluding observations on their consideration of the report as a whole.

26. Mr. FODOR recalled that, when the second periodic report of Poland had been considered, the members of the Committee had praised its excellence, the highly competent delegation and the fruitful dialogue that had begun with the Committee. The same could be said of the consideration of the third periodic report, especially as far-reaching changes had occurred during the period since the submission of the second report. Thanks to efforts aimed at modifying the social and political system, legislation and practice had been considerably improved, despite a very difficult economic situation. In that connection, neither the Government in its report nor the Polish delegation in its introduction had referred to the adverse consequences of the economic situation for the implementation of the Covenant, although the connection should be obvious, especially regarding conditions of detention, actions by the police, the dissemination of information and job discrimination. At the same time, the example of Poland showed that even in a very difficult economic situation, great progress could be made if determination and favourable political conditions were present.

27. He congratulated the State party on the progress it had made in the area of human rights and strengthening democracy in the country. He thanked the Polish delegation for its cooperation with the Committee.

28. Mr. HERNDL welcomed the excellent dialogue that had been established between the Polish delegation and the Committee. The Polish Government was to be commended for submitting its report on time, particularly in view of the difficulties the country was currently undergoing. The Polish delegation had

given a remarkably frank description of the human rights situation in Poland and the changes that had occurred in recent years. Although certain questions remained unanswered, it must nevertheless be hoped that the Polish Government would take the Committee's observations into account when continuing its restructuring of the Polish legal system.

29. The report had some gaps, especially regarding the treatment of minorities, and the Polish Government should take all the necessary measures for dealing with that issue, in particular by strictly observing the provisions of the Covenant. He was not unaware of the difficulties currently facing the Polish people and Government, and he sincerely hoped that Poland's next periodic report would indicate a definite improvement in the human rights situation in the country.

30. Mr. EL SHAFEI thanked the Polish delegation for the highly competent replies it had given to the numerous questions raised by the members of the Committee, thus enabling a constructive dialogue to be established. The detailed information provided by the delegation on the implementation of the new laws adopted in Poland had given the Committee a better understanding of the process begun to bring those laws more into line with the provisions of the Covenant. Poland's ratification of a number of international human rights instruments and the Government's declared intention to ratify the Optional Protocol were also very significant developments.

31. As some members of the Committee had noted, some improvements still needed to be made; he hoped that Poland's next periodic report would deal with all the questions raised and that the Polish authorities would take advantage of the dialogue that had occurred between the delegation and the Committee in order further to promote respect for human rights in the country.

32. Mr. WENNERGREN noted with satisfaction that the consideraton of Poland's third periodic report had shown that Poland was truly a State under the rule of law which had made impressive progress in very little time. The Polish delegation had replied with great competence to the many questions raised by the members of the Committee, but some questions had probably been more sensitive than others. He had asked in particular whether Polish legislation was really in conformity with article 9, paragraphs 3 and 4, of the Covenant, which enshrined the principle of habeas corpus. He would like to be more fully informed on that point, which he found extremely important. Finally, he hoped that the Polish Government and people would continue to progress in their efforts to achieve full respect for human rights.

33. Mrs. HIGGINS expressed particular satisfaction with the Polish Govenment's punctual submission of its report, the excellence of the information supplied, the frequent application of the provisions of the Covenant by the courts, the important role played by the Civil Rights Spokesman, the steps taken to ratify the Optional Protocol and the great number of bills to amend the legislation so as to ensure greater respect for human rights.

34. However, the Polish delegation itself had acknowledged that certain problems persisted. In particular, she wondered why capital punishment was expected to be maintained in the revised Constitution and Penal Code. Similarly, regarding pre-trial detention, it seemed that the legislation

should be amended in such a way that questions relating to family visits and access to a lawyer would be settled not by the public prosecutor, but by the courts. The new legislation should also provide for the possibility of filing an appeal against a decision to place a person in a psychiatric institution, in keeping with the provisions of article 9 of the Covenant. On another matter, the replies given to the questions relating to the implementation of article 19 of the Covenant did not appear to be entirely satisfactory, and it would be helpful if the Polish authorities would again define the criteria applied in restricting freedom of expression. With regard to article 27 of the Covenant, she realized that States parties were not bound under the Covenant to provide education entirely in minority languages, but that it was rather a question of preserving the minority cultures. She did not doubt that the dispersion of minority groups made it difficult to dispense instruction in the respective mother tongues in Poland. Finally, the fact that few questions had been raised concerning trade unions did not mean that the Committee was not interested in that issue, but that it had taken note of the detailed information contained in the report.

35. Ms. CHANET praised the quality of the Polish report and thanked the Polish delegation for its oral introduction, in particular the frankness with which it had referred to the problem of ill-treatment of detainees. The explanations given seemed to be sufficient to allay certain doubts the Committee had expressed as to the incorporation of all the provisions of the Covenant into Polish internal legislation.

36. In the current process of remodelling the Constitution, the Polish Government should guarantee the principle of the presumption of innocence, enshrined in article 14, paragraph 2, of the Covenant, for that was a fundamental tenet that guaranteed the protection of individuals against any possibility of arbitrary behaviour by the State. With regard to freedom of thought and expression she shared the concerns expressed by the members of the Committee regarding the Act of 29 May 1989, which limited freedom of expression in certain areas. Finally, regarding the question of abortion, which was dealt with in the Polish report under the heading of the right to life, it should be stressed that the Committee had not yet taken a definite position on how that question should be approached.

37. Mr. LALLAH said that the Committee had indeed not yet formulated an opinion on the link between abortion and the right to life. A number of factors came into play, and for his part he did not believe that treating abortion as an offence was a step forward in implementing the provisions of the Covenant. Similarly, the Committee had not yet been able to adopt a general comment on article 27, and thus it could only interpret that article as meaning that minorities must not be prevented from exercising their rights in the areas of culture, language and religion. That was a complex problem, which the Committee had faced on a number of occasions when considering communications from members of minorities.

38. He noted with great satisfaction the Polish people's efforts in the last decade to implement the provisions of the Covenant and continue their traditional support for human rights. He hoped they would continue to make progress in their efforts to achieve full democracy.

39. Mr. SADI said that the dialogue between the Polish delegation and the Committee, while very interesting, perhaps did not provide a complete overview of the human rights situation in a country which was currently experiencing a deep upheaval. To have a clearer idea of that situation, one that was shared by all the countries of Eastern Europe that had recently undergone drastic changes, it might be advisable for Poland's next periodic report to be submitted to the Committee before the official deadline, namely 1994.

40. He would also like to know whether the Polish authorities were planning to reopen the cases of persons prosecuted and convicted not only for political reasons, but also for ordinary crimes, under outdated provisions found to be inconsistent with the Covenant and currently being revised, such as the Penal Code. It would also be advisable to enact a law in Poland prohibiting the legalization of those of the 90 political parties that reportedly violated article 20 of the Covenant by inciting people to violence or advocating racism or nazism. Finally, although some of the Covenant's provisions had already been invoked in Poland, the Covenant's status should certainly be reinforced.

41. Regarding the question of abortion, he said that he himself belonged to the minority who believed that the right to life applied to the foetus. However, it was true that the Committee had not yet reached a consensus on that problem.

42. Mr. MYULLERSON said that, in view of Poland's economic difficulties and its totalitarian past, the efforts of the country's authorities to implement international human rights instruments and carry out democratic reform were all the more praiseworthy. He hoped that the dialogue that had just taken place at a crucial moment in Poland's history would help the Polish authorities to enact the necessary laws and enforce them. In any event, he was convinced that democracy would prevail in Poland.

43. Mr. ANDO also expressed appreciation for the exemplary dialogue that had taken place between a State party and the Committee. Five years earlier, when Poland's second periodic report had been submitted, he had just joined the Committee. While he hoped that he himself had gained some experience, he noted that enormous progress had been made in the meantime by a country whose tragic history was reflected in its aspirations for freedom and democracy.

44. However, there remained certain aspects of respect for human rights that should be improved. Some of the issues that came to mind were the treatment of persons in pre-trial detention, the duration of pre-trial detention, and the absolute prohibition of abortion. Human rights information for the population in general should also be developed, in particular in the schools. He was convinced, however, that despite its difficulties, Poland would be able to make the transition from a planned economy to a more liberal economy, and he hoped that its experience with the Committee would make a useful contribution to that process.

45. Mr. PRADO VALLEJO joined the other members of the Committee in expressing appreciation for the positive, sincere and objective dialogue that had just taken place. Unlike the delegations of some countries, which occasionally resorted to pretexts for justifying the persistence of certain problems, the Polish delegation had expressed itself clearly and sincerely and had not

hesitated to admit, in the report and orally, that a number of difficulties persisted. Yet there had been enormous progress in the country, not only with regard to human rights legislation, but also in the moves towards peaceful democratic reform. That evolution bore witness to the maturity of the Polish people.

46. Among the new regime's steps to guarantee respect for human rights was the enactment of laws providing the people with the possibility of invoking remedies in the area of respect for human rights and fundamental freedoms. Some problems continued to arise, of course, but they could certainly be overcome. In particular, the treatment of detainees in police custody should be better controlled. It was not sufficient to investigate reported abuses: efforts must be directed to preventing their recurrence. The prolongation of pre-trial detention, which could last up to two years, was also excessive and inconsistent with the provisions of the Covenant. The Polish authorities should also ensure that the house searches which could be carried out in the event of a national emergency being decreed did not lead to abuses. The provisions restricting the freedom of the television stations - which had hitherto been under State control - and of publications that undermined freedom of expression should also be revised.

47. However, the overall picture in Poland was highly positive, despite the many difficulties raised by the transition from totalitarianism to democracy, of which the Latin American countries were only too well aware. The fact that the Polish authorities had taken the time to think about the laws needed to ensure respect for human rights was to be welcomed.

48. The CHAIRMAN noted that all the members of the Committee joined in paying a tribute to the remarkable progress made in Poland since the submission of that country's previous periodic report five years before. Thanks to those developments, Polish practice and legislation had become more consistent with the Covenant, although changes inevitably gave rise to criticism. There had been obvious progress not only in civil but also in political rights, and the legislative elections that had just taken place showed that political pluralism now existed in Poland. In revising the legislation, the authorities had tried to take account of international human rights standards, in particular the International Covenant on Civil and Political Rights. Examples were the provisions governing the treatment of minorities, which were in conformity with article 27 of the Covenant and which, in particular, authorized the members of minorities to use their own language. Regarding the problem of abortion, as Ms. Chanet, Mrs. Higgins and Mr. Lallah had pointed out, the Committee had not yet developed a common position.

49. It was very unusual for a State party to submit its report by the prescribed deadline and then provide additional information on new developments up to the month before the session at which the report was considered. Countries which, like Poland, were undergoing deep upheavals often failed to submit their reports in order to avoid revealing their difficulties and exposing themselves to criticism. Yet the Polish authorities had allowed the Committee to study the situation in their country at a crucial time, when such an exercise could precisely be the most useful.

50. For his part, he was convinced that Poland's fourth periodic report, which was to be submitted by 27 October 1994, would indicate still further progress. In conclusion, he conveyed his great appreciation to the Polish delegation and its interpreter, who had singlehandedly provided interpretation for all the exchanges of views between the State party and the Committee. Finally, he asked the Polish delegation to give the best wishes of the members of the Committee to their former colleague, Mr. Zielinski.

51. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the report just considered by the Committee was the first one to be prepared by Poland under democratic conditions and to describe the changes in the country as it went from an authoritarian system to a State under the rule of law, where human rights would be respected and where the well-being of everyone was the ultimate goal.

52. She sincerely thanked the members of the Committee, who had thoroughly and sympathetically analysed the contents of the report and who had not hesitated to point out its gaps. The remarks, doubts and concerns they had expressed would help the Polish authorities to improve their legal system and implement it better. Her delegation, for its part, was happy to have shown through its report how concerned the country was fully to respect human rights and fundamental freedoms. She hoped that its valuable relations with the Committee would not be limited to submitting periodic reports and that Poland would shortly accede to the Second Optional Protocol aiming at the abolition of the death penalty. Although it was not impossible that some complaints involving respect for human rights in Poland would reach the Committee, no effort would be spared in Poland to improve the situation.

53. The CHAIRMAN said that the Committee had completed its consideration of the third periodic report of Poland.

The first part (public) of the meeting rose at 5.05 p.m.